U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-I-

DATE: JULY 27, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a power equipment manufacturer and distributor, seeks to employ the Beneficiary as a supplier quality engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the evidence of record did not establish that the Beneficiary has the requisite educational degree to qualify for the offered position under the terms of the labor certification.

On appeal the Petitioner submits a brief and supporting documentation. The Petitioner asserts that the Beneficiary has a foreign equivalent degree to a U.S. master's degree in industrial engineering, and therefore meets the educational requirement of the labor certification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

A petition for an advanced degree professional must be accompanied by documentation showing that the beneficiary is a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(1). The regulation

at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." It also provides that "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.*

A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

At issue on appeal is whether the Beneficiary meets the education and experience requirements of the labor certification. Section H of the labor certification requires a master's degree in industrial engineering, or a foreign educational equivalent, and 36 months of experience in the job offered. It does not allow for an alternate combination of education and experience.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a master's degree in industrial engineering from the in Spain, completed in 2007. Section K of the labor certification states that the Beneficiary met the 36-month experience requirement by virtue of his employment as a supplier qualify engineer by in from October 2004 through June 2008.

As evidence of the Beneficiary's educational credential, the Petitioner submitted copies of the Beneficiary's diploma and academic transcript from the These documents show that the Beneficiary received a *titulo universitario official de Ingeniero Industrial* (official university degree, or title, of industrial engineer) in January 2007 after completing the coursework over an 11-year period from 1989 to 2000 and a capstone project in May 2006. The Petitioner also submitted three credential evaluations, two from and one from , all asserting that the Beneficiary's Spanish degree is equivalent to a master's degrees in industrial engineering from an accredited university in the United States. As evidence of the Beneficiary's experience the Petitioner submitted a letter from stating that the Beneficiary was employed as a supplier qualify engineer/development engineer from October 2004 through June 2008.

A. Beneficiary's Education

The Director found that the Beneficiary's educational credential from the is not equivalent to a U.S. master's degree. The Director consulted the , created by the

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is February 4, 2017.

which described the *Titulo de Ingeniero* in Spain as a credential awarded after five years of post-secondary study in engineering and a final project, and advised that the degree is comparable to a bachelor's degree in the United States. Noting that the and evaluations also referred to the Beneficiary's academic program as a five-year degree, in conformance with the description, the Director did not accept the conclusions of and that the Beneficiary's degree is equivalent to a U.S. master's degree.

On appeal the Petitioner asserts that the entry for *Titulo de Ingeniero* does not apply to the Beneficiary's program of study and diploma from the because the entry applies to a Bologna-compliant degree, whereas the Beneficiary earned his *titulo universitario official de Ingeniero Industrial* under a curriculum dating from 1973 that preceded the Bologna Process.[3] The Petitioner submits a statement prepared in September 2017 by a professor and secretary of the Superior Technical School of Engineering at the which certified that the Beneficiary studied industrial engineering under the 1973 curriculum which was divided into two parts, each comprising three years. According to the university's current curriculum was adopted pursuant to a royal decree of October 2007 that restructured the framework of university education in Spain in accord with the European Framework of Higher Education, 1999 Bologna Declaration.[4] The Petitioner also submits copies of a state bulletin from the Spanish Ministry of Education, Culture and Sports (Ministry of Education), dated August 12, 2015, determining that a *titulo de Ingeniero Industrial* is equivalent to level 3 (master's degree) of the Spanish Qualifications Framework for Higher Education, and a "certificate of equivalency" from an official in the Ministry of Education, dated in September 2017, stating that the *titulo de Ingeniero Industrial* obtained by the Beneficiary is equivalent to a level 3 (master's) degree in the Spanish Higher Education Qualifications Framework.

We are not persuaded by the materials submitted on appeal that the Beneficiary's educational credential from the is equivalent to a U.S. master's degree. Regarding the statement of he makes no claim as to the U.S. equivalency of the Beneficiary's industrial engineering degree. Nor does substantiate his assertion that the Beneficiary's curriculum comprised two parts of three years each since he did not analyze the Beneficiary's transcript and explain how the courses were organized in two parts or how they totaled six years of study in view of the fact that the Beneficiary's coursework was completed over an 11-year period. As for the state

[3] As explained by the Petitioner, the Bologna Process is a series of ministerial meetings and agreements among European countries, proceeding from the Bologna Declaration of 1999, to ensure comparability in the standards and quality of educational programs and credentials.

[4] According to the most recent reform law affecting university education in Spain was the Universities Organic Law *(Ley Organica de Universidades – LOU)*, enacted in 2001, which reorganized Spain's system of higher education along the lines of the Bologna Declaration with the goal of conforming all university degrees with the Bologna Declaration by 2010. http:// (last visited July 26, 2018).

bulletin and "certificate of equivalency" from the Spanish Ministry of Education, they focus on the degree level of a *titulo de Ingeniero Industrial* in Spain and other Bologna-compliant countries in Europe. They make no claim as to the equivalency of this educational credential in the United States.

The Petitioner asserts that the Director did not give proper weight to the educational evaluations from [redacted] and [redacted] Both of these credential evaluation services claim that the Beneficiary's *Titulo Universitario Oficial de Ingeniero* was a five-year degree program that included 120 hours, or credits, of undergraduate level coursework and 30 hours, or credits, of postgraduate level coursework. The evaluations do not include any detailed analysis of the Beneficiary's coursework, however, and provide no substantive basis for their assertions as to the number of undergraduate and postgraduate credit hours were earned in the courses. Neither [redacted] nor [redacted] makes any reference to the Beneficiary's transcript, which in itself does not indicate how many hours or credits each course was worth. In fact, the column in the transcript beneath the heading "Cred" is empty. Finally, the [redacted] and [redacted] descriptions of the Beneficiary's *Titulo Universitario Oficial de Ingeniero* as a five-year degree program is inconsistent with the Petitioner's claim on appeal, incorporated in the statement of [redacted] and a publication by the [redacted] in 1997 on "New Study Plans" for industrial engineering, that the Beneficiary's degree program comprised six years of study.

Evaluations of educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. We may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Given the substantive deficiencies of the [redacted] and [redacted] evaluations, and their material inconsistency with the statement of [redacted] and the 1997 publication of the [redacted] we conclude that the evaluations have little evidentiary weight in this proceeding.

Independent of the [redacted] and [redacted] evaluations, the Petitioner asserts that the Beneficiary's transcripts show that he completed 120 credit hours of undergraduate level coursework followed by 30 credit hours of postgraduate level coursework. As mentioned above, however, the transcript does not confirm this claim since the column headed "Cred" (presumably shorthand for "Credits") contains no numerical entries for any of the courses listed in the two-page document. The Petitioner does not otherwise explain how the asserted number of credit hours earned is extrapolated from the information provided on the transcript. The Petitioner also cites the [redacted] "New Study Plans" for industrial engineering as described in its October 1997 publication, according to which the industrial engineering program was to be reduced from a 3+3 (six-year) structure to a 2+3 (five-year) structure beginning in the 1998-99 academic year. While the Petitioner claims that this publication demonstrates that the Beneficiary completed a six-year course of study to earn his *Titulo Universitario Oficial de Ingeniero* at the [redacted] the Petitioner has not shown how the Beneficiary's actual coursework, completed over an 11-year time period from 1989 to 2000, added up to six academic years of study. The publication itself makes no claim as to the equivalency of the industrial engineering degree, old or new, in the United States.

Finally, the Petitioner indicates that the Beneficiary completed an MBA program at the [redacted] in Virginia, and submits a letter from a school official which confirms the Beneficiary's enrollment and graduation and states that to apply for the graduate program the Beneficiary was required to submit his degree from the [redacted] "with a recognized US equivalence as bachelor's and master's degree." According to the Petitioner, this document is further proof that the Beneficiary's Spanish degree is equivalent to a U.S. master's degree. However, the academic requirements of U.S. educational institution for entry into a postgraduate degree program are not dispositive for USCIS in determining the U.S. equivalency of a foreign degree. USCIS is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions of the federal court of appeals from whatever circuit that the action arose. *See N.L.R.B. v Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the Administrative Procedures Act, even when they are published in private publications or widely circulated). Therefore, the academic requirements of the [redacted] for entry into its MBA program do not govern the determination by USCIS, in the context of this immigrant visa petition, as to whether the Beneficiary's *Titulo Universitario Oficial de Ingeniero* is equivalent to a U.S. master's degree.

For all of the reasons discussed above, the Petitioner has not established that the Beneficiary has a U.S. master's degree in industrial engineering or a foreign equivalent degree, as required by the labor certification.

B. Beneficiary's Experience

The regulation at 8 C.F.R. § 204.5(g)(1) provides, in pertinent part, that:

> Evidence relating to qualifying experience . . . shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien . . . .

The letter from [redacted] stating that the Beneficiary was employed from October 2004 through June 2008, while identifying the job title and describing the duties performed, does not provide the address of the company or the title of the writer except to identify him as "department chief" of an otherwise unidentified department. Since the letter from [redacted] does not meet the substantive requirements of 8 C.F.R. § 204.5(g)(1), it does not establish that the Beneficiary had at least three years of qualifying experience as a supplier quality engineer, as required to meet the minimum requirement of the labor certification.

III. CONCLUSION

The record does not establish that the Beneficiary meets the minimum educational and experience requirements of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of S-I-*, ID# 1255922 (AAO July 27, 2018)